

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:)	Chapter 11
)	
W.G. LOCKHART CONSTRUCTION)	Case No. 00-50896
COMPANY, INC.,)	Adversary Proceeding No. 03-5083
)	
Debtor.)	
)	
)	
KATHRYN BELFANCE, Trustee)	Case No. 5:03-CV-01782
)	
Plaintiff,)	
)	Judge Ann Aldrich
v.)	
)	Magistrate Judge William Baughman
NATIONAL ENGINEERING &)	
CONTRACTING CO.,)	
)	
Defendant.)	<u>ORDER</u>

In July 2003, defendant National Engineering and Contracting Company (“National”) filed a motion to withdraw the reference with respect to an adversary proceeding filed by plaintiff Kathryn Belfance (“Belfance”) in her role as United States Bankruptcy Trustee for debtor W.G. Lockhart Construction Company, Inc. (“Lockhart”). This court granted that motion in August 2003. The adversary proceeding concerns monies allegedly owed by National to Lockhart as a result of a settlement between National and the Ohio Department of Transportation (“ODOT”) concerning work performed by National for ODOT under a contract. Lockhart was one of National’s subcontractors, and alleges that it has not been paid its fair share from the ODOT settlement with National, the general contractor.

In December 2004, Belfance filed the instant motion for partial summary judgment [Docket No. 14]. The motion was referred to Magistrate Judge Baughman for a report and recommendation (“R&R”), which was filed on June 28, 2006 [Docket No. 25]. Magistrate Judge Baughman recommended that because Lockhart has not presented any evidence that the ODOT settlement necessarily included any money for any of Lockhart’s claims, Lockhart’s motion for summary judgment should be denied. No objection has been filed by either Belfance or National to the R&R, and both parties were informed of the consequences of failing to file objections. Therefore, the parties have waived further review of the R&R’s findings of fact and conclusions of law by the court and the right to appeal the court’s order to the Sixth Circuit. *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir.1995).

The court adopts the well-reasoned and thorough R&R [Docket No. 25] in its entirety and for the reasons stated therein denies Belfance’s motion for partial summary judgment [Docket No. 14]. The court sets a status conference for **Thursday, October 12, 2006 at 2:30 p.m.**

IT IS SO ORDERED.

/s/ Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: September 20, 2006